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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Tom Sprinkle

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EXAMINER

OSTRUP, CLINTON T

ART UNIT

PAPER NUMBER

3771

MAIL DATE

DELIVERY MODE

08/05/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/601,729	Applicant(s) SPRINKLE ET AL.	
	Examiner CLINTON OSTRUP	Art Unit 3771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 26-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 26-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 June 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office Action is responsive to the response filed December 10, 2007. Claims 1-5 and 26-29 are pending in this application.

Withdrawal of Allowable Subject Matter

2. The indicated allowability of claims 1-3 is withdrawn in view of the newly discovered reference(s) to Raje et al (6,823,869) and Scarberry et al (2002/0100479). Rejections based on the newly cited reference(s) follow.

Drawings

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: reference character "167" is not mentioned in the specification. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-2 are rejected under 35 U.S.C. 102(e) as being anticipated by Raje et al (6,823,869).

Regarding claim 1, Raje discloses a mask (10) with a shell (40) and a cushion (30) connected with the shell; the shell having a side wall (Figure A9a 504) and a retaining ring (502) disposed inside the side wall. The side wall and said retaining ring define a gap (500) between the sidewall the retaining ring and the gap extends around the shell. The cushion has a side wall (side of cushion) with an outer peripheral edge portion (edge that contacts the shell) including a tongue (520) extending around said cushion. The tongue of the cushion is received in the gap of the shell to secure the cushion to the shell. See: col. 25, lines 29-42 & figures A9a & F44.

Regarding claim 2, Raje discloses a mask with a retaining ring that has a notch (area formed by 506 & 516 meet) adjacent the gap (500) and the tongue (520) having a flange (522) extending transverse to said tongue, and the flange being received within the notch to secure the cushion to the shell. See: col. 25, line 58 – col. 26, line 28 and figure 44.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Raje et al., (6,823,869) and further in view of Scarberry et al (2002/0100479).

Raje discloses all the limitations of claim 3 except the shell side wall having a plurality of projecting posts and the retaining ring having a plurality of sleeves for receiving the posts to support the retaining ring on the shell.

Scarberry teaches a nasal mask (10) with a shell sidewall (side of 12) having an attachment mechanism to enhance the bonding attachment of the seal (18) to the body (12) and specifically describes screws and tacks as attachment means. Since screws and tacks would comprise a plurality of projecting posts, and by using the screws or tacks to adhere the seal to the body, the retaining ring would necessarily have a plurality of sleeves for receiving the screws or tacks (as formed), and the interaction of the posts and sleeves would cause the retaining ring to be supported on the shell. Moreover, Scarberry teaches bosses (42) which are projecting posts for providing additional support to the annular member at the location of the anchorage mechanisms (38). See: page 5 [0047]-[0048] and figures 3-6.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modified the means for attaching the seal to the body (shell) via the retaining ring as disclosed by Raje by using screws or tacks to secure seal to the body, as taught by Scarberry, to obtain a mask with a seal that is more securely fastened to the body of the mask.

8. Claims 4-5 and 26-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Palkon et. al. (7,007,696) and further in view of Heidbrink (2,133,699).

Palkon discloses a nasal mask with a shell (16) and a cushion (30) connected with said shell. Palkon discloses a cushion with a side wall (45), an inner wall (46) wherein the inner wall extends transverse to said side wall. The cushion also has an outer wall (48) that tends to transverse the side wall and is adapted to engage and seal against the face of a user of the mask (Figs. 1 & 7). Palkon discloses the outer wall of the cushion as extending substantially around the cushion (Figs. 2-5) and Palkon teaches forming a discontinuous region at the nasal bridge area of the cushion (Fig. 2); however, Palkon lacks the specific teaching that the inner wall of the cushion is discontinuous.

Heidbrink teaches a mask with a discontinuous inner membrane at the nasal bridge region that provides a good seal from outside air and adapts to different shapes.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the discontinuously shaped nasal bridge portion of the nasal mask disclosed by Palkon, by utilizing the nasal bridge shape taught by

Heidbrink, to obtain a nasal mask that provides a good seal to users with differently shaped faces.

Regarding claim 5, Palkon teaches the inner wall (46) as thicker than the outer wall (48) at the lip region, but lacks specifically stating the inner wall as being stronger than the outer wall. See: page 2 [0029]. However, it would be obvious to a skilled artisan that a thicker membrane would be stronger than a thin membrane. See: figure 7.

Regarding claim 26, Palkon discloses an outer wall extending laterally inward from the side wall and the inner wall extending around the side wall.

Regarding claim 27, Palkon discloses a thicker inner wall of a cushion as compared to the outer wall and a thicker wall would be expected to be stiffer than a thinner wall.

Regarding claims 28 and 29, Palkon discloses a thicker inner wall of a cushion as compared to the outer wall and a thicker wall would be expected to be stiffer than a thinner wall and whether the inner wall is spaced from the outer wall when the outer wall seals against the user's face would be dependent upon the force applied to the mask. However, figures 6-11 show an inner wall that is spaced from an outer wall and it could be reasonably expected that they would remain spaced apart in a force dependent manner.

Response to Arguments

9. Applicant's arguments with respect to claims 1-5 and 26-29 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to CLINTON OSTRUP whose telephone number is (571)272-5559. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Clinton Ostrup/
Examiner, Art Unit 3771

/Justine R Yu/
Supervisory Patent Examiner, Art Unit 3771